

ASSEMBLY BILL

No. 2048

Introduced by Assembly Members Dahle, Chesbro, and Gordon
(Principal coauthor: Senator Gaines)

February 20, 2014

An act to amend Sections 4211, 4212, 4213, 4214, 4220, 4221, and 4225 of the Public Resources Code, relating to fire prevention.

LEGISLATIVE COUNSEL'S DIGEST

AB 2048, as introduced, Dahle. Fire prevention fees: state responsibility areas.

Existing law requires the State Board of Forestry and Fire Protection, on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 to be charged on each structure, defined as a building used or intended to be used for human habitation, on a parcel that is within a state responsibility area.

This bill would delete the definition of “structure” for purposes of the fire prevention fee and instead use “habitable structure,” which the bill would define to mean a building that contains one or more dwelling units that can be occupied for residential use, as provided. The bill would also include the definition of “person” and “owner of a structure,” as provided.

The bill would require the fee to be levied upon the owner of a habitable structure identified by the department as located with the state responsibility area if that person owns the habitable structure on July 1 of the year for which the fee is due. The bill would authorize the board to exempt from the fire prevention fee any habitable structure that is

subsequently deemed uninhabitable as a result of a natural disaster during the year the fee is due if certain conditions are met.

Existing law requires the board to adjust the fire prevention fee annually using prescribed methods.

This bill would instead authorize the board to adjust the fee using those methods.

Existing law establishes the State Responsibility Area Fire Prevention Fund and requires the board to report to the Legislature every January 1 on the status and uses of the fund.

This bill would require the board to report to the Legislature every January 31.

Existing law authorizes a person from whom the fire prevention fee is determined to be due to petition for a redetermination of whether the fee applies to that person within 30 days after service upon the person of a notice of determination. Existing law requires the petition for redetermination to be in writing and be sent to the department, the board, and the State Board of Equalization.

This bill would, if a petition for redetermination is filed after the expiration of the 30-day time period, authorize the petition to be treated as an administrative protest or claim for refund if the department determines that the facts presented indicate that the fire prevention fee originally determined may have been excessive or the amount or the application of the fee may have been the result of an error by the department, its agent, or the State Board of Equalization. This bill would delete the requirements that the petition for redetermination be sent to the board and the State Board of Equalization.

Existing law requires a penalty of 20% of the fee determined to be due to be added to the amount due and payable for each 30-day period in which the fee remains unpaid.

This bill would instead add a penalty of 10% to the amount due in accordance with existing law relating to late fee payments.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4211 of the Public Resources Code is
- 2 amended to read:
- 3 4211. For the purposes of this chapter, the following terms
- 4 shall have the following meanings:

1 ~~(a) “Structure” means a building used or intended to be used~~
2 ~~for human habitation. For purposes of this subdivision, a building~~
3 ~~includes, but is not limited to, a mobilehome or manufactured~~
4 ~~home. The board shall exclude from this definition building types~~
5 ~~that require no structural fire protection services beyond those~~
6 ~~provided to otherwise unimproved lands.~~

7 ~~(a) “Habitable Structure” means a building that contains one~~
8 ~~or more dwelling units or that can be occupied for residential use.~~
9 ~~Buildings occupied for residential use include single family homes,~~
10 ~~multidwelling structures, mobile and manufactured homes, and~~
11 ~~condominiums. Habitable structures do not include commercial,~~
12 ~~industrial, or incidental buildings such as detached garages, barns,~~
13 ~~outdoor sanitation facilities, and sheds.~~

14 ~~(b) “State responsibility area” means state responsibility area~~
15 ~~as defined in Section 4102.~~

16 ~~(c) “Person” means an individual, trust, joint stock company,~~
17 ~~business concern, or corporation, including, but not limited to, a~~
18 ~~government corporation, partnership, limited liability company,~~
19 ~~or association. “Person” also includes any city, county, city and~~
20 ~~county, district, commission, the state or any department, agency,~~
21 ~~or political subdivision thereof, any interstate body, and the United~~
22 ~~States and its agencies and instrumentalities to the extent permitted~~
23 ~~by law.~~

24 ~~(d) “Owner of a habitable structure” means the person that is~~
25 ~~the owner of record of a habitable structure in the county tax~~
26 ~~assessor rolls or as recorded in the records of the Department of~~
27 ~~Housing and Community Development on July 1 of the state fiscal~~
28 ~~year for which the fee is due.~~

29 SEC. 2. Section 4212 of the Public Resources Code is amended
30 to read:

31 4212. (a) (1) By September 1, 2011, the board shall adopt
32 emergency regulations to establish a fire prevention fee for the
33 purposes of this chapter in an amount not to exceed one hundred
34 fifty dollars (\$150) to be charged on each *habitable* structure on
35 a parcel that is within a state responsibility area.

36 (2) The Legislature finds and declares that a fire prevention fee
37 of not more than one hundred fifty dollars (\$150) is a reasonable
38 amount for the necessary fire prevention activities of the state that
39 benefit the owner of a *habitable* structure within a state
40 responsibility area.

(b) On July 1, 2013, and annually thereafter, the board ~~shall~~ *may* adjust the fire prevention fees imposed pursuant to this chapter to reflect the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as calculated by the United States Department of Commerce for the 12-month period in the third quarter of the prior calendar year, as reported by the Department of Finance.

(c) Emergency regulations adopted pursuant to subdivision (a) shall be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

SEC. 3. Section 4213 of the Public Resources Code is amended to read:

4213. (a) (1) Commencing with the 2011–12 fiscal year, the fire prevention fee imposed pursuant to Section 4212 shall be collected annually by the State Board of Equalization in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the department that a person is required to pay a fire prevention fee, or a determination by the department regarding the amount of that fee, is subject to review under Article 2 (commencing with Section 4220) and is not subject to a petition for redetermination by the State Board of Equalization.

(3) (A) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the department improperly or erroneously calculated the amount of the fire prevention fee, or incorrectly determined that the person is subject to that fee, unless that determination has been set aside by the department or a court reviewing the determination of the department.

(B) If it is determined by the department or a reviewing court that a person is entitled to a refund of all or part of the fire prevention fee, the person shall make a claim to the State Board

1 of Equalization pursuant to Chapter 5 (commencing with Section
2 55221) of Part 30 of Division 2 of the Revenue and Taxation Code.

3 (b) The annual fire prevention fee shall be due and payable 30
4 days from the date of assessment by the State Board of
5 Equalization.

6 (c) *The fire prevention fee shall be levied upon the owner of a*
7 *habitable structure identified by the department as located within*
8 *the state responsibility area, if that person owns the habitable*
9 *structure on July 1 of the year for which the fee is due.*

10 (1) *The board may exempt from the fire prevention fee any*
11 *habitable structure that is subsequently deemed uninhabitable as*
12 *a result of a natural disaster during the year for which the fee is*
13 *due, as well as one subsequent year if the habitable structure has*
14 *not been repaired or rebuilt. The board shall only consider*
15 *granting an exemption if the following conditions are met:*

16 (i) *The owner of the habitable structure certifies that the*
17 *structure is not habitable as a result of a natural disaster.*

18 (ii) *The owner of the habitable structure either can document*
19 *that the habitable structure passed a defensible space inspection*
20 *conducted by the department or by one of its agents within one*
21 *year of the date the structure was damaged or destroyed or certifies*
22 *that clearance as required under Section 4291 was in place at the*
23 *time that the structure was damaged or destroyed as a result of a*
24 *natural disaster.*

25 (2) *The board shall prepare forms for purposes of the*
26 *certification requirements in paragraph (1).*

27 ~~(e)~~

28 (d) Within 30 days of the effective date of this chapter, the
29 department shall transmit to the State Board of Equalization, and
30 ~~each~~ *no later than January 1 each year* thereafter, the appropriate
31 name and address of each person who is liable for the fire
32 prevention fee and the amount of the fee to be assessed, as
33 authorized by this article, and at the same time the department
34 shall provide to the State Board of Equalization a contact telephone
35 number for the board to be printed on the bill to respond to
36 questions about the fee.

37 ~~(d)~~

38 (e) Commencing with the 2012–13 fiscal year, if in any given
39 fiscal year there are sufficient amounts of money in the State
40 Responsibility Area Fire Prevention Fund created pursuant to

1 Section 4214 to finance the costs of the programs under subdivision
2 (d) of Section 4214 for that fiscal year, the fee may not be collected
3 that fiscal year.

4 SEC. 4. Section 4214 of the Public Resources Code is amended
5 to read:

6 4214. (a) Fire prevention fees collected pursuant to this chapter
7 shall be expended, upon appropriation by the Legislature, as
8 follows:

9 (1) The State Board of Equalization shall retain moneys
10 necessary for the payment of refunds pursuant to Section 4228 and
11 reimbursement of the State Board of Equalization for expenses
12 incurred in the collection of the fee.

13 (2) The moneys collected, other than ~~that~~ *those* retained by the
14 State Board of Equalization pursuant to paragraph (1), shall be
15 deposited into the State Responsibility Area Fire Prevention Fund,
16 which is hereby created in the State Treasury, and shall be available
17 to the board and the department to expend for fire prevention
18 activities specified in subdivision (d) that benefit the owners of
19 *habitable* structures within a state responsibility area who are
20 required to pay the fire prevention fee. The amount expended to
21 benefit the owners of *habitable* structures within a state
22 responsibility area shall be commensurate with the amount
23 collected from the owners within that state responsibility area. All
24 moneys in excess of the costs of administration of the board and
25 the department shall be expended only for fire prevention activities
26 in counties with state responsibility areas.

27 (b) (1) The fund may also be used to cover the costs of
28 administering this chapter.

29 (2) The fund shall cover all startup costs incurred over a period
30 not to exceed two years.

31 (c) It is the intent of the Legislature that the moneys in this fund
32 be fully appropriated to the board and the department each year
33 in order to effectuate the purposes of this chapter.

34 (d) Moneys in the fund shall be used only for the following fire
35 prevention activities, which shall benefit owners of *habitable*
36 structures within the state responsibility areas who are required to
37 pay the annual fire prevention fee pursuant to this chapter:

38 (1) Local assistance grants pursuant to subdivision (e).

1 (2) Grants to Fire Safe Councils, the California Conservation
2 Corps, or certified local conservation corps for fire prevention
3 projects and activities in the state responsibility areas.

4 (3) Grants to a qualified nonprofit organization with a
5 demonstrated ability to satisfactorily plan, implement, and complete
6 a fire prevention project applicable to the state responsibility areas.
7 The department may establish other qualifying criteria.

8 (4) Inspections by the department for compliance with defensible
9 space requirements around *habitable* structures in state
10 responsibility areas as required by Section 4291.

11 (5) Public education to reduce fire risk in the state responsibility
12 areas.

13 (6) Fire severity and fire hazard mapping by the department in
14 the state responsibility areas.

15 (7) Other fire prevention projects in the state responsibility
16 areas, authorized by the board.

17 (e) (1) The board shall establish a local assistance grant program
18 for fire prevention activities designed to benefit *habitable* structures
19 within state responsibility areas, including public education, that
20 are provided by counties and other local agencies, including special
21 districts, with state responsibility areas within their jurisdictions.

22 (2) In order to ensure an equitable distribution of funds, the
23 amount of each grant shall be based on the number of *habitable*
24 structures in state responsibility areas for which the applicant is
25 legally responsible and the amount of moneys made available in
26 the annual Budget Act for this local assistance grant program.

27 (f) By January ~~4, 2013~~, *31, 2015*, and annually thereafter, the
28 board shall submit to the Legislature a written report on the status
29 and uses of the fund pursuant to this chapter. The written report
30 shall also include an evaluation of the benefits received by counties
31 based on the number of *habitable* structures in state responsibility
32 areas within their jurisdictions, the effectiveness of the board's
33 grant programs, the number of defensible space inspections in the
34 reporting period, the degree of compliance with defensible space
35 requirements, measures to increase compliance, if any, and any
36 recommendations to the Legislature.

37 (g) (1) The requirement for submitting a report imposed under
38 subdivision (f) is inoperative on January ~~4, 2013~~, *31, 2017*, pursuant to
39 Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (f) shall be submitted in compliance with Section 9795 of the Government Code.

(h) It is essential that this article be implemented without delay. To permit timely implementation, the department may contract for services related to the establishment of the fire prevention fee collection process. For this purpose only, and for a period not to exceed 24 months, the provisions of the Public Contract Code or any other provision of law related to public contracting shall not apply.

SEC. 5. Section 4220 of the Public Resources Code is amended to read:

4220. (a) A person from whom the fire prevention fee is determined to be due under this chapter may petition for a redetermination of whether this chapter applies to that person within 30 days after service upon him or her of a notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration of the 30-day period.

(b) *If a petition for redetermination is filed after the expiration of the 30-day time period specified in subdivision (a), the untimely petition may be treated as an administrative protest or claim for refund if the department determines that the facts presented indicate that the fire prevention fee originally determined may have been excessive or that the amount or the application of the fee may have been the result of an error by the department, its agent, or the State Board of Equalization. Petitions filed pursuant to this subdivision shall generally be reviewed in the same manner as a timely petition for redetermination.*

SEC. 6. Section 4221 of the Public Resources Code is amended to read:

4221. Each petition for redetermination of the application of this chapter shall be in writing and be sent to the department, ~~the board, and the State Board of Equalization or its designee.~~ The petition shall state the specific grounds upon which the petition is founded and include supporting documentation. The petition may be amended to state additional grounds or provide additional documentation at any time prior to the date that the department issues its order or decision with regard to the petition for redetermination.

1 SEC. 7. Section 4225 of the Public Resources Code is amended
2 to read:
3 4225. The fire prevention fee determined to be due by the
4 department under this article is due and payable at the time it
5 becomes final, and if it is not paid when due and payable,
6 ~~notwithstanding the a~~ penalty imposed pursuant to Section ~~55042~~
7 ~~55086~~ of the Revenue and Taxation Code, ~~a penalty of 20 percent~~
8 ~~of the fee determined to be due shall be added to the amount due~~
9 ~~and payable for each 30-day period in which the fee remains unpaid~~
10 *shall be applied.*

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